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biological son of Decedent, Richard Phillips

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ERIC PHILLIPS, SURVIVING  
BIOLOGICAL SON OF DECEDENT,  
RICHARD PHILLIPS,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,  
Defendant.

CASE NO. 1:23-cv-01753-BAM

**STIPULATED PROTECTIVE  
ORDER; ~~PROPOSED~~  
PROTECTIVE ORDER**

**ORDER VACATING STATUS  
CONFERENCE**

It is hereby stipulated by and between Plaintiff, ERIC PHILLIPS, SURVIVING BIOLOGICAL SON OF DECEDENT, RICHARD PHILLIPS, and Defendant, THE UNITED STATES OF AMERICA, by and through their attorneys of record herein:

In light of the nature of this litigation, and in particular that it involves medical treatment and services provided to Decedent, Richard Phillips, the parties anticipate that a protective order may be necessary to cover information protected by the Privacy Act, 5 U.S.C. § 552a.

The parties acknowledge and agree that certain medical records, deposition testimony and potentially discoverable documents in this case will contain confidential information regarding Decedent, Richard Phillips. This information is integral to proving or disproving the medical negligence alleged in this action.

1 Subject to and without waiving any statutory or Constitutional privileges or  
 2 objections to the admissibility or discoverability of any testimony, information or  
 3 documents produced in connection with this Order, the parties stipulate that access  
 4 to and use of such testimony, documents, and information shall be governed by the  
 5 provisions of this Stipulated Protective Order and that the terms set forth herein may be  
 6 entered by the Court, pursuant to Federal Rules of Civil Procedure 26(c). This Stipulated  
 7 Protective Order shall also apply to all copies, extracts, and summaries of designated  
 8 documents.

## 9 I.

### 10 **DESIGNATION OF CONFIDENTIAL DOCUMENTS**

11 A. “Confidential” materials shall be all documents that are handwritten,  
 12 typewritten, printed, photostated, photographed, photocopied, transmitted by  
 13 electronic mail or facsimile, and recorded by every means upon any tangible thing,  
 14 any form of communication or representation, including letters, words, pictures,  
 15 sounds or symbols, or combinations thereof, and any records thereby created  
 16 regardless of the manner in which the record has been stored, which contain  
 17 confidential and private information pertaining to Decedent, Richard Phillips. Any  
 18 document designated as “Confidential” by a party producing that document shall,  
 19 without more, subject that material to the provisions of this Stipulated Protective  
 20 Order.

21 B. The scope of this Stipulated Protective Order is limited to any such materials  
 22 identified above related to or referencing medical treatment and services provided to  
 23 Richard Phillips.

24 C. Any document may be designated as “Confidential” upon a good faith  
 25 determination by a party that the document falls within the purview of the specified  
 26 category of protected documents by stamping or affixing the word  
 27 “CONFIDENTIAL” on the face of the document. Tangible things other than  
 28

documents (e.g., audio tapes, products, computer disks, etc.) may be designated by stamping or affixing the designation to the item or its container as appropriate.

D. Any party may designate material as “Confidential” after production, only under the following conditions:

1. The party to whom such documents have been produced must be timely notified;
2. The new designation applies only as of the date and time of receipt of notice by the party notified;
3. The party to whom such documents have been disclosed must be provided with another copy of the documents that bears the new and correct designation;
4. The party to whom such documents have been produced must make a good faith effort to immediately retrieve any information disclosed to persons not authorized by this Protective Order to receive such information, and obtain an agreement from the persons to whom the disclosure was made to be bound by this Protective Order.

## II.

### **RESTRICTIONS REGARDING CONFIDENTIAL DOCUMENTS**

A. No “Confidential” documents produced by any party shall be used for any purpose other than in this litigation, in preparation for, and in use at trial of this case.

B. There shall be no disclosure of documents designated as “Confidential” to anyone other than the following:

1. The parties to the case, including current employees, officers, or directors of a corporation or entity party responsible for assisting counsel in the litigation and who have a reasonable need to know the contents of the “Confidential” documents;
2. The parties’ attorneys, and the attorneys’ staff, including, but not limited to, outside copy service personnel;

3. Experts and consultants retained by attorneys for the parties in the preparation or presentation of the case;
4. The court or other officer who presides over any proceeding in the case, and to court reporters as necessary; and
5. If a party wishes to file a “Confidential” document with the court, the party must seek to do so under seal in compliance with Local Rule 141.

C. Disclosure

1. Other than the parties’ attorneys, any person to whom Confidential documents or their information are to be disclosed shall be provided and required to read a copy of this Stipulated Protective Order before disclosure of such information to that person. The person must agree to abide by the terms of this Stipulated Protective Order by executing a non-disclosure agreement that acknowledges that the person has reviewed the Stipulated Protective Order, that the person understands the Stipulated Protective Order, and that the person agrees to abide by the Stipulated Protective Order, and by providing the signed agreement to counsel who intends to make such disclosure. Counsel for each party shall maintain a list of the names of all persons to whom he, she, or they have disclosed Confidential documents or the information contained therein, and shall, upon three business days-notice, produce to any other party copies of such agreements for inspection and copying.

2. Whenever, during the course of a deposition, “Confidential” documents or information are utilized by the examining attorney, only those persons permitted access to such documents pursuant to this Stipulated Protective Order shall be present at the deposition. Counsel for the party noticing the deposition shall instruct the court reporter that he or she is to ensure that all exhibits containing “Confidential” exhibits are labeled prominently as “CONFIDENTIAL,” and that originals or copies of such “Confidential” exhibits may be released to no one except counsel for the parties.

1           3. Any party to this Stipulation may designate testimony given during a  
2 deposition as “Confidential” via the party’s counsel making a statement on the  
3 record before or during the testimony that is “Confidential” and subject to this  
4 stipulation and order. The portions of a deposition which contain “Confidential”  
5 testimony shall be prepared by the court reporter in a separate transcript.

6                               **III.**

7                               **GENERAL**

8           A. The terms of this Stipulated Protective Order shall be binding on all  
9 parties from the time that all parties’ counsels have signed the Stipulation, even if  
10 the Court has not signed the Order.

11           B. This Stipulated Protective Order may be modified or terminated by the  
12 court for good cause shown, or by signed stipulation by all parties.

13           C. Any party for good cause may apply to the court to challenge a  
14 designation made by any other party, or to reveal information that the producing  
15 party has redacted, after an attempt has been made to meet and confer over the  
16 issue. Upon such a request to the court to challenge the designation made, the  
17 court shall first review the documents and determine whether the designation  
18 is appropriate. The parties shall comply with this Stipulated Protective Order  
19 unless the court orders otherwise.

20           D. The party designating material as “Confidential” may waive any of the  
21 provisions of this Stipulated Protective Order in writing.

22           E. The parties agree that they will meet and confer with the court as  
23 necessary about the handling of material designated by any of the parties as  
24 “Confidential,” produced pursuant to this Stipulated Protective Order for trial  
25 purposes. Nothing herein shall be construed as a concession by any party  
26 that its presentation at trial of evidence relevant to its claims or defenses should  
27 be restricted in any manner.

28           F. This Order shall be without prejudice to present a stipulation or motion to  
the court under Federal Rules of Civil Procedure 26(c) for a separate Protective

Order as to any particular document or information, including restrictions different from those as specified herein. This shall not be deemed to prejudice the parties in any way in any future application for modification of this Stipulation and Order.

**IV.**

**TERMINATION OF THE LITIGATION**

Within twenty days after a settlement, judgment or dismissal in this matter, all *original* “Confidential” materials and all copies or portions thereof containing or reflecting information from “Confidential” documents shall be returned to counsel for the producing party. *Copies* of any such documents may be destroyed by the party in possession.

**IT IS SO STIPULATED.**

Dated: May 7, 2024

QUINLAN, KERSHAW & FANUCCHI, LLP

By: /s/ Robert D. Bassett  
ROBERT D. BASSETT, ESQ.  
Attorney for Plaintiff

Dated: May\_\_3,\_\_2024

PHILLIP A. TALBERT  
United States Attorney

By: /s/ Alyson A. Berg  
ALYSON A. BERG  
Assistant United States Attorney  
Attorneys for UNITED STATES  
OF AMERICA

**ORDER**

Having considered the above stipulation and finding good cause, the Court adopts the signed stipulated protective order.

The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents subject to the protective order to be filed under seal must be accompanied by a written request which complies with Local Rule 141 prior to sealing. The party making a request to file documents under seal shall be required to show good cause for documents attached to a non-dispositive motion or compelling reasons for documents attached to a dispositive motion. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-78 (9th Cir. 2009). Within five (5) days of any approved document filed under seal, the party shall file a redacted copy of the sealed document. The redactions shall be narrowly tailored to protect only the information that is confidential or was deemed confidential.

Additionally, the parties shall consider resolving any dispute arising under the protective order according to the Court's informal discovery dispute procedure.

Furthermore, the status conference currently set for **May 15, 2024** to address the anticipated protective order is VACATED.

IT IS SO ORDERED.

Dated: **May 7, 2024**

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE